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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/680,172	10/05/2000	Remi Swierczek	5713-2	8130
21324	7590	05/12/2004	EXAMINER	
HAHN LOESER & PARKS, LLP TWIN OAKS ESTATE 1225 W. MARKET STREET AKRON, OH 44313			GART, MATTHEW S	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 05/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/680,172

Applicant(s)

SWIERCZEK, REMI

Examiner

Matthew s Gart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-20 is/are pending in the application.
- 4a) Of the above claim(s) 1-12 and 14-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 13-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____
- 4) ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date. 18.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____

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DETAILED ACTION

Below is a new office action on the merits whereby Claims 13 and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Kenyon U.S. Patent Application Publication 2002/0023020 A1. A shortened statutory period for reply is set to expire 3 months from the mailing date of this new communication. The rejection as set forth in Paper No. 17 has been vacated per the discussion with Mr. Muzilla on April 27, 2004.

Claims 13 and 20 are pending in the instant application. Claims 1-12 and 14-19 were canceled via Paper No. 17.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 13 and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Kenyon U.S. Patent Application Publication 2002/0023020 A1.

Referring to claim 13. Kenyon discloses a process of identifying music, comprising:

- a) Providing a communication device to be used by a consumer (abstract and paragraph 0013);

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- b) A service provider providing a music identification device having a database of prerecorded musical works (abstract and sheet 3);
- c) The consumer recording a segment of music that is audible to the consumer in a location remote from the music identification device using said portable communication device (abstract);
- d) The consumer transmitting said recorded musical segment from said communication device into a central processing unit (abstract);
- e) The music identification device analyzing and comparing said musical segment to the database of musical works (abstract);
- f) The music identification device identifying at least one closest match (abstract);
- g) The music identification device generating database information regarding said at least one closest match (abstract); and
- h) The music identification device transmitting the database information regarding said at least one closest match to the consumer (abstract).

Referring to claim 20. Claim 20 is rejected under the same rationale as set forth above in claim 13.

Conclusion

Any inquiry concerning this communication should be directed to Matthew Gart whose telephone number is 703-305-5355. This examiner can normally be reached Monday-Friday, 8:30AM-5:30PM EST.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Wynn Coggins can be reached on 703-308-1344. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7239 for regular communications and 703-746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

MSG

February 13, 2004


Jeffrey A. Smith
Primary Examiner
Acting SPE
AU 3625